

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

DEREK HINKLEY,)	
)	
Petitioner,)	
)	
v.)	2:13-cr-00049-NT
)	2:21-cv-00344-NT
UNITED STATES OF AMERICA,)	
)	
Respondent)	

ORDER ON PETITION FOR POSTCONVICTON RELIEF

Petitioner filed a postconviction motion challenging the Court’s jurisdiction and, therefore, his conviction and sentence. (Motion, ECF No. 138). Because Plaintiff challenges his conviction and sentence, the motion is properly characterized as a motion pursuant to 28 U.S.C § 2255, to vacate, set aside or correct his sentence.

In *Castro v. United States*, 540 U.S. 375 (2003), the Supreme Court discussed the process by which a court may construe a request for relief as a section 2255 motion:

Under a longstanding practice, a court sometimes treats as a request for habeas relief under 28 U.S.C. § 2255 a motion that a *pro se* federal prisoner has labeled differently. Such recharacterization can have serious consequences for the prisoner, for it subjects any subsequent motion under § 2255 to the restrictive conditions that federal law imposes upon a “second or successive” (but not upon a first) federal habeas motion. In light of these consequences, we hold that the court cannot so recharacterize a *pro se* litigant’s motion as the litigant’s first § 2255 motion *unless* the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent § 2255 motions to the law’s “second or successive” restrictions, and provides the litigant with an opportunity to withdraw, or to amend, the filing. Where these things are not done, a recharacterized motion will not count as a § 2255 motion for purposes of applying § 2255’s “second or successive” provision.

Id. at 377 (citations omitted). The Supreme Court also explained that the reason for permitting a petitioner to amend the motion is “so that it contains all the § 2255 claims he believes he has.” *Id.* at 383.

Given the relief Petitioner seeks, the characterization of Petitioner’s motion as a section 2255 motion is appropriate. In accordance with *Castro*, therefore, the Court (1) advises Petitioner that the Court has construed his pro se filing to be a Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255; (2) advises Petitioner that if at some point in the future Petitioner files a second or successive section 2255 motion, the recharacterization of this first section 2255 motion will subject him to the restrictions on second or successive collateral challenges; and (3) permits Petitioner until January 14, 2022, either to withdraw or to amend his section 2255 motion if he wishes to do so.

NOTICE

Any objections to this Order shall be filed in accordance with Federal Rule of Civil Procedure 72 and Federal Rule of Criminal Procedure 59.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 7th day of December, 2021.